



## THE COMMONWEALTH OF MASSACHUSETTS

### WATER RESOURCES COMMISSION

100 CAMBRIDGE STREET, BOSTON MA 02114

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### **Meeting Minutes for September 9, 2004**

#### **Members in Attendance:**

Karl Honkonen	Designee, EOE
Marilyn Contreas	Designee, DHCD
Duane LeVangie	Designee, DEP
Gerard Kennedy	Designee, DAR
Mark Tisa	Designee, DFG
Ron Sharpin	Designee, DCR
Joe Pelczarski	Designee, CZM
Matthew Rhodes	Public Member
David Rich	Public Member

#### **Others in Attendance:**

Linda Marler	DCR
Michele Drury	DCR
Mike Gildesgame	DCR
Sara Cohen	DCR
Bruce Taggart	USGS
Margaret Kearns	Riverways
Vandana Rao	EOEA
Karen Pighetti	Tata & Howard

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#### **Agenda Item #1: Executive Director's Report**

Marler provided an update on the hydrologic conditions:

- There was a good amount of precipitation in August. Much of this occurred between August 15<sup>th</sup> and 31<sup>st</sup>, due to tropical storms. Cape Cod received a good amount of rain from these tropical storms. This has helped ease this region's precipitation deficit.
- USGS has not yet posted its ground water level map, so this has not been included in the report. Normal ground water levels were experienced in August, with the exception of the Northeast, where there was some above normal levels, and on Cape Cod, which had below normal levels. Streamflow was either normal or above normal. The tropical storms are reflected in the hydrographs included in the report.
- Reservoir levels are in good condition.
- Fire danger is down because of the rain events.
- All the forecasts and drought maps are indicating that there are no significant problems for Massachusetts. We are watching Hurricane Ivan. Pelczarski said that it has been predicted that Ivan would miss Florida and move up the East Coast.

Honkonen gave the Executive Director's Report:

- Honkonen proposed that the WRC hold an extended meeting next month, from 9 AM to noon, before the regularly scheduled WRC meeting in Boston. The Secretary will join us for the first hour. The water policy task force report should be in final draft form and will be released the week after the October WRC meeting. The first hour will be dedicated to discussing with the Secretary how the WRC could and should be involved in implementing the recommendations of the task force. After this, there will be a discussion of where we are and where we need to go. Honkonen invited comments from WRC members. Tisa said it was a fine idea, but he was disappointed that he would not be able to make the meeting. He will be sending a representative. Rich said that he was also disappointed that he would not be able to attend, but he may send a representative, as well. LeVangie said he did not know what Giles' schedule was that day, but that she chairs the WMA advisory group and the meetings for that group were purposely scheduled for the mornings of the WRC meetings. This might be a potential conflict. Honkonen said that someone else was welcome to sit in, in Giles' absence. Gildesgame said that he met with OWR staff to begin scoping out how the WRC and staff could fit into the recommendations of the water policy task force. Once this has been fleshed out, he will forward it to Honkonen.
- Public members may continue to serve until they are replaced. The Governor's Office of Appointments is sending out papers to have the public members reappointed. Rhodes said he hadn't yet received anything. Public members can continue to vote, even if they haven't been officially reappointed. Honkonen is still waiting for nominations for the ground water representative. Drury said that she had spoken with Bill Salomaa, who said he would try to make some calls. Honkonen said that would be good, because so far he had not been successful. Gildesgame said that he would follow-up as well.
- The Wilmington FEIR has been submitted. Staff is reviewing to make sure that all the information has been provided. Staff will be commenting to MEPA on the FEIR. If the application is complete, public hearings will likely be held this winter, with a Staff Recommendation being presented to the WRC early next year. Similar to Reading, Wilmington is applying to join the MWRA to ease the stress on the Ipswich River, however, they have lost several wells to contamination and they need to supplement the existing wells with MWRA water. In addition to the MWRA connection, the Comprehensive Water Resources Management Plan covers sewerage. The extent of sewerage areas has been decreased in response to DEP concerns.
- Conference rooms have been booked at the Saltonstall Building through December for WRC meetings. Honkonen asked if this is a good location or should an alternate site be found? The consensus was that this is a good location.

**Agenda Item #2: Vote – Minutes of July 2000, October 2002, November 2002 and December 2002:**

Contreas moved, seconded by Rich, to approve the meeting minutes of July 2000. The vote was 5 to approve with 3 abstentions.

Contreas moved, seconded by LeVangie, to approve the meeting minutes of October 2002. The vote was 4 to approve with 4 abstentions.

Tisa moved, seconded by Rich, to approve the meeting minutes of November 2002. The vote was 7 to approve with 1 abstention.

Tisa moved, seconded by Rich, to approve the meeting minutes of December 2000. The vote was 7 to approve with 1 abstention.

**Agenda Item #3:Vote – Shrewsbury’s Request for a Determination of Applicability under the Interbasin Transfer Act**

Drury acknowledged Shrewsbury’s representative. She recapped the discussion from last month. Shrewsbury’s Home Farm Well #2 was installed in 1990 to provide redundancy for the existing Home Farm Well. At that time, the WRC did not take jurisdiction under the Interbasin Transfer Act (ITA), because it was stated that the well would be used redundantly, making it exempt under the ITA regulations. Since that time, Shrewsbury has started using this well in tandem with the rest of their sources. Most of these sources are in Blackstone River basin. Shrewsbury also has land area in the Concord River basin. The reason this triggers the Act is that Shrewsbury discharges its wastewater to the Concord River basin via the Westborough publicly owned treatment works (POTW), therefore water crosses both a municipal boundary and a basin boundary for ultimate discharge.

The Town has been trying to come into compliance with both the ITA and Water Management Act (WMA). Staff has been working with Shrewsbury and DEP for about two years to help them come into compliance. In 2003, DEP and the town entered into an Administrative Consent Order. As part of this process, Shrewsbury has been reviewing its existing water supply system. They have two wells in the Blackstone River basin that will be abandoned, the Oak Street well and the Sewell Well #5. The combined capacity of these two wells is 775 gallons per minute (gpm) or 1.1 million gallons per day (mgd). The capacity of the Home Farm Well #2 (1,400 gpm or 2.0 mgd) exceeds the combined capacity of these two wells by 0.9 mgd. In order to come into compliance with the ITA and assure that the overall capacity of the “transfer facilities” (wells) in the Blackstone River basin does not exceed the capacity that existed at the time of the passage of the Act (i.e. the “grandfathered” capacity), the Town is proposing to adjust its existing Supervisory Control and Data Acquisition (SCADA) system at the Home Farm site to shut down the pumps once the maximum daily volume is reached. WRC Staff calculates that to be in compliance with the requirements of the ITA, the volume from the Home Farm Wells #1 and #2 should be restricted to no more than 5.4 mgd: 4.3 mgd (Volume of Home Farm Well #1) + 1.1 mgd (Volume to be abandoned in the Blackstone River basin through the closure of the Oak Street Well and Sewell Well #5) = 5.4 mgd.

If the town does these things, this project does not represent an increase over the present rate of interbasin transfer and the Act will not apply. However, this recommendation is conditional on Shrewsbury doing the following:

1. By November 1, 2004, Shrewsbury must provide documentation that the Oak Street Well and Sewell Well #5 have been officially abandoned according to DEP’s procedures. According to information provided to support Shrewsbury’s Request for Determination of Applicability, the Town anticipates that the well abandonment process will be completed by October 1, 2004. If any unexpected delays occur, Shrewsbury must notify WRC Staff immediately.
2. Shrewsbury must provide the WRC with documentation that the SCADA system controlling the Home Farm Well site has been adjusted to restrict pumping to no more than 5.4 mgd. Shrewsbury must provide a schedule for this action to the WRC by November 1, 2004.
3. Shrewsbury must provide the Annual Statistical Reports, required by DEP, to WRC Staff, to document that pumping from the Home Farm Wells is within the “grandfathered” capacity under the ITA. These reports must be provided by the last business day of February, every year,

for as long as the Home Farm Well site is operational (i.e. not officially abandoned according to DEP's procedures).

If, for any reason other than a DEP Emergency Declaration, Shrewsbury uses the Home Farm Wells at a pumping rate greater than 5.4 mgd, the ITA will apply retroactively and Shrewsbury will be required to file an application for the full amount of increase of interbasin transfer from the Blackstone River basin.

Last month an issue was brought up concerning Poor Farm Brook. Shrewsbury's Home Farm wells are located near Lake Quinsigamond, where Poor Farm Brook comes into the lake. There is a valuable cold-water fishery in that brook and both Riverways and Division of Fisheries and Wildlife (DFW) have raised concerns. Since last month, DEP has met with DFW and Riverways. This well will need a WMA permit and if this Commission agrees with the Staff Recommendation, the WMA will be the appropriate place to address these issues. Kearns said that DEP did not really indicate that they would be restricting use of this well in any way. She reminded the WRC that last month she had stated that an interbasin transfer could include a change of operating rules and thought that the Act should apply here. LeVangie said that the WMA permit was under review at DEP. The permit application is requesting to add this well and increase withdrawals from this subbasin, which is classified as highly stressed.

A question was raised about the locations of the Oak Street and Sewell Street wells. Drury replied that they are in the same basin, but not the same subbasin. The WRC's charge under the ITA is on the basin level, not on the subbasin level. Kearns said that the regulations mention change in operating rules and capacity that was authorized, constructed and useable for water supply purposes. Therefore she thinks the WRC should take jurisdiction. Drury stated that she understood Kearns' point, but the precedent and practices have been to regulate on total capacity and there is precedent for communities abandoning certain sources and replacing them with others so that they do not increase the total transfer out of a basin. Staff does not interpret the Act and regulations in as broad a manner as suggested by the Riverways program. Contreas asked why the WRC had to vote on this now, before other permits are issued. Drury replied that according to our regulations, the WRC has to make a decision within 90 days of receiving a complete request. This date falls on the September 12<sup>th</sup>. Contreas asked about the conditions, because it is unusual to condition a Determination of Applicability. Drury replied that if Shrewsbury does not do the things required by the conditions, the Act applies. Shrewsbury has said that they will do these things. LeVangie added that the WMA regulations require that all other permits and approvals be obtained before the WMA permit can be issued.

Tisa asked about the precedence. If the Commission hadn't set a precedent, would things be done differently, based on what we know now? Drury said no. Our charge is on the basin level, not the subbasin level and the way the Act and regulations have been interpreted is that interbasin transfer is regulated on capacity. If a proponent does not exceed the total capacity, the Commission does not take jurisdiction. LeVangie asked Tisa how he would determine a change in operating rules. If a replacement well were drilled, would that trigger the Act? Tisa replied that his concern was not so much the replacement of the well, but the location of the well because of the impacts of flows on aquatic resources. Drury said she agreed that there could be different impacts depending on where the sources were located. Just because the WRC does not take jurisdiction, doesn't mean there won't be impacts, and it doesn't mean they won't be addressed. Tisa asked if there could there be a change in the way the Act was interpreted.

Gildesgame said that if the WRC decides that something needs to be changed, it could do it. Drury added that she disagreed with the way Riverways was interpreting the regulations and she believes that the current interpretation is in keeping with the Act's intent. She added that the WRC has taken jurisdiction over changes in operating rules, but it usually involves an increase rather than a substitution. Kearns said if the impacts for a certain location on a river have not been assessed it could be a problem. Drury agreed, but said that the question here was jurisdictional. It would be more appropriate to address these issues under the WMA. Gildesgame said if the ITA is judged to be not applicable, then the WRC can't regulate under it.

LeVangie said that DEP was required to look at those kinds of issues under the Water Management Act. DEP is looking at Home Farm #1, as well. DEP recognizes that this is a highly stressed basin. They have indicated through the Orders to Complete that permitting this well will be a challenge. Since this process started, Shrewsbury has done a lot to reduce water use. A question was raised about the WMA public comment process. LeVangie said that the public comment process had occurred and the Orders to Complete included public comments. This does not mean that DEP cannot address additional public comments. Tisa asked if the Boston Office or the Regional Office was handling the WMA permit. LeVangie answered that the Regional Office was handling it, but that he has been closely involved. Since the new policy was implemented, the Boston Office reviews any new permit before it is issued.

Rich asked if this went through MEPA. Drury said she thought it went through MEPA in the late 80's. Rich said he agrees with staff that this is a jurisdictional issue. DEP has the jurisdiction. If it went through MEPA, they would have had some jurisdiction.

<b>V</b>	Rich moved, with a second by LeVangie, that the Commission find that Interbasin Transfer
<b>O</b>	Act does not apply to the Home Farm Well #2, as per the Staff Recommendation.
<b>T</b>	
<b>E</b>	The vote was 7 to 1 to approve the Staff Recommendation.

#### **Agenda Item #4: Discussion – Update on the WRC Work Plan**

Honkonen stated that it was important to bring the WRC up to date on where it stood with the tasks outlined in this year's work plan.

- Water Assets task: Cohen reported that 130 community reports were to be sent out in the next week. October roll-out meetings are scheduled. The plan is to produce final Regional Summary Reports by watershed in December 2004. Water Assets Phase II will cover towns other than Cape Cod and MWRA-supplied communities and those without public water supplies. A pilot Water Budget project will be done as an inflow-outflow study by subbasin.
- State Streamflow Standards: Marler reviewed activities that occurred in 2004. The work was based on the USGS state-wide study of streamflow characteristics at index gages. The Streamflow Standards Task Force held numerous meetings. Monthly streamflow statistics by region or by category of basins will be identified. Research continues. Future USGS studies will help refine the methodology.
- Water Policy: 250 pages of comments have been received and are being processed. New recommendations are scheduled to be released in mid-October.
- Regulatory Review: Drury and Honkonen indicated that many reviews have been completed. Some are still on-going and others have fallen off the agenda (no action on the proponent's part). Some will be coming before the Commission before the end of the year.

- Honkonen said that the task to examine the growth-water relationship was a bit nebulous, but it is discussed more extensively under the Draft Water Policy, in conjunction with expanding the Water Assets program and developing water budgets.
- EOEA is hoping to issue a grant which will offer funds to communities for the purposes of purchasing land for water supply protection. There is not a lot of money, but the RFR should be posted by the end of this month. Gildesgame asked about the time frame for implementing the RFR. Honkonen said that it is a FY05 item, so it should be completed by the end of the fiscal year.
- Gildesgame said that the GEIR task was complete. This includes the development of the Practical Guide for Lake Management in Massachusetts. This was recently shipped to Conservation Commissions. Staff is currently in the process of doing another mailing to watershed associations throughout the state. The GEIR is posted on the DCR, DEP, and EOEA/WRC websites. Five workshops were held across the state.
- Honkonen moved on to the speaker series task. The Commission talked about having people come in to discuss a variety of cutting edge water resources subjects. This hasn't been done, but Honkonen thinks it is a good idea. It could broaden the WRC's horizons, and Gildesgame suggested that responsibility for providing speakers be rotated through the membership of the WRC. This could be done about three times per year. Honkonen solicited ideas for speakers and topics.
- The 5-year watershed action plan task: EOEA is forging ahead. Eight of these are completed. Six are in the process of being completed and another three will be completed in this FY. Rao said that the completed plans were on the EOEA web site. The watershed action plans will be used to prioritize grant applications. Gildesgame asked how the watershed action plans fit into the water policy implementation. Rao answered that this is part of the RFR for these plans. Each has a list of priority actions.
- Water Conservation Standards: being revised under the Water Policy
- Interbasin Transfer Act Guidance: Complete
- Interbasin Transfer Act Regulation Updates: Still at EOEA, legal staff. Honkonen will pursue this.
- Stressed Basins: Progress is being limited by staffing.
- Ipswich EPA Grant: Cohen reported on a \$1 Million demonstration program grant awarded by EPA to DCR/OWR for the Ipswich River basin. The grant will be used to fund implementation of Low-Impact-Development in a subdivision; a rain barrel/cistern program; a stormwater project on Silver Lake in Wilmington; a North Reading ballfield turf/soil enhancement demonstration project; and a green roof. The grant's emphasis is on the headwaters.

#### **Agenda Item #5: Discussion – Water Policy Implementation**

Honkonen stated that the task force met for the final time last week and put together a draft report. Part of this is an implementation plan, which is in table form summarizing the main actions identified, who might be helpful in implementing the actions, how much it might cost and the time frame. Honkonen noted that these are draft recommendations and likely to change as the report is finalized. He turned the discussion over to Rao. Rao stated that many of the action items identified stemmed from actions that had been taken by the WRC over many years. The water policy task force is intended to push it forward to the next level. The actions do not encompass everything that the WRC is working on. The idea was to look at things that can be done over the next 2-3 years.

**Create a stress framework** is something that the WRC has done in the past. The task force wants to extend this beyond the water quantity definition in order to define for communities what it means to be in a high, medium or low stressed basin and what is expected of these communities (mitigation or actions to bring stress level down). The goal is to create different levels of strategies for each of these levels of stress. Gildesgame asked if the expectation was that the regulatory agencies would be implementing this policy or will it mean that new regulations are needed? Rao answered that the hope was that this could be done with the current regulations. This will require a re-look at the conservation standards. Because the standards are over 10 years old, it may be a good time to revise them. In addition, there are also standards that DEP has put out earlier this year, which use offsets. This principle should be looked at in terms of stressed basins and conservation strategies. The WRC, through a task force, will be doing this work.

**Water budgets** The idea is to develop these budgets for all the watersheds. Marler asked if a consultant would be doing this work. Rao answered that the plan was for WRC staff to do this work and it will occur over a couple of years. Drury said it sounded similar to water assets--how is it different? Rao said that it is the same as water assets, but it is an attempt to integrate all the work done under the water assets project.

**Establish enterprise accounts in communities** The goal is for every community to have an enterprise account for infrastructure maintenance. EOEA is trying to draft legislation to require this to encourage communities to establish these accounts. This was a big priority for the task force.

**Increase treated wastewater recharge and reuse** This item is a way of looking at other ways to generate more water. Massachusetts should be looking at reusing wastewater to recharge aquifers. This is being done in other parts of the country and other parts of the world.

**Stormwater recharge** generated a lot of public comments and there was a lot of interest in the task force, itself, about this topic. Communities should be encouraged to use the right type of BMPs for stormwater recharge. It is suggested that the stormwater guidance from wetland areas be extended to upland areas. The application of Low Impact Development techniques is an idea that needs to be developed and applied across the state. This ties into the enterprise account item.

**Develop a policy on water supply development** to guide communities to areas where they should be looking first for their next source of water. A prescribed list of actions for water supply development should be compiled, so that communities know where they should be looking first and what their last option should be.

**Provide guidance to encourage development that will reduce negative impacts on the environment.** Information should be provided to communities on state water laws and policy, by-laws and ordinances that encourage environmental protection. Also, information on the programs the state is working on, such as water assets, smart growth, etc, should be provided.

**Habitat protection** This includes target fish communities and the work Riverways is doing. If this work is to be completed in the next two years, additional staff will be needed. EOEA is working to get funding to hire two additional staff. This also includes looking at the documents, Living Waters and the Biomap. These documents need to be integrated into in our conservation

and land acquisition programs, as well as the planning that is being done on the local level. Lakes and ponds is also part of this item. DCR has been working on this for years. The task force wants to encourage increased outreach. Grants for critical habitat acquisition: \$3.1 million has been made available through the self-help program.

**Sustainable development and fix it first.** This involves loan programs to advance infrastructure repair over new construction.

**Permitting and regulation** The goal is to make things easier, decrease the time frame for permitting, make information available, and have a single point of contact for technical assistance. Gildesgame asked why the Office of Technical Assistance was targeted for this task, since their focus is on private industry. Rao answered that OTA has been very successful at providing technical assistance, and they are not restricted to private industry. The idea is to expand the role of OTA. This item does not advocate substantive changes to permitting. It is more concerned with the procedural approach to permitting. Instead of having back to back timelines, simultaneous timelines would be encouraged. Pelczarski and LeVangie noted that some timelines were dictated by the legislation. For example, the Water Management Act permit cannot be granted until all other permits have been issued. And no permits can be issued until the MEPA process has been completed. Honkonen said that the issue is the predictability of the process. In some cases it has been so obscure that a proponent doesn't know what they are getting into or how long it is going to take.

Drury said that the MEPA process was a great place to get these sorts of issues out and it provided public access to the process. Rao said that one of ideas is to have a pre-application process so that all those involved in approving a project will provide the information needed for all permitting processes upfront. Pelczarski said the local and federal governments should be included. Contreas said that there are issues with developers not wanting to engage in expensive engineering studies that may uncover problems several months into the project. They want to know how much they can get away with without expending money, so in a sense, they've hung themselves up by not practicing due diligence up front. We can't prevent other people's behavior. Drury agreed that pre-application meetings do help. The ITA program tries to meet with perspective proponents as often as possible. They are told how the application will be evaluated and that they need to provide certain types of studies. If these are not provided, the application will be incomplete.

Contreas stated that if we don't accept an application as complete and keep asking for the studies the proponent hasn't provided, then we become the obstructers. Drury answered that if we've asked for it before they've gotten into the process, they know they need to provide it. Contreas asked about documentation of these requests. Drury replied that the process is well documented. Gildesgame added that all the problems with an application can't be predicted, but at least this can help reduce them. Drury stated that the ITA program has looked at some projects may have seemed insignificant at first, but once we've gotten into the review, and looked at the details, the project became more complicated. In these cases, we've told the proponent as soon as possible what the problems were. The pre-application process helps a proponent make a decision as to if they should even apply.

Marler stated that even if a review could be fast-tracked, there is still the reality of staffing issues. So if ten projects come in at once, there may only be one or two people reviewing and



commenting on all those projects, in addition to their other duties. If the state wants the permitting process to go faster, they will have to add staff. Rao agreed that is a realistic assessment. Honkonen suggested that this be mentioned to Secretary Herzfelder next month.

Rich said that before the state had a staffing problem, it took seven or eight years to get through the permitting programs to develop a water supply. Water suppliers are assessed a specific amount of money to go into implementation of the Safe Drinking Water Act. He said he was sure that if water suppliers had some assurance that money would go to staffing to expedite the permitting process for water source development, they would be willing to pay that. Water suppliers would like a single state permit. "Tell us what you want," he said "and we will provide and pay for it." In addition, Rich said, there are so many appeals to all permits. A project can be appealed on the same issue three or four times over. This costs money and time. Water suppliers don't have an issue with the state pointing out problems and requiring us to correct them, or with the project going to public hearing and even being appealed, but, he said, it should not be appealed on the same issue time and again. Rao suggested that this item should also look at the appeal process for the various permits.

**Working more closely with MA Highways** The focus is to look at the impact that highway construction has on waterways and to facilitate a more effective working relationship between MHD and the Transportation Department and the environmental agencies, through OCD, to get a better handle on what projects are coming up, and to weigh in on design and BMPs. Gildesgame said that MA Highways already has an environmental unit. Is this item to strengthen that unit? Rao answered that the intention is more to have the EOEA agencies work better with these agencies.

Rao requested that the Commission review the Data Needs section. Pelczarski asked if the budgeting issues for precipitation and streamflow gaging had been resolved. Honkonen said that he has been working on this. Pelczarski added that data collection should be a budgetary necessity, if we are to accomplish all this.

Honkonen said that this is where EOEA is headed now. The idea is to continue WRC involvement with this policy. Keep these in mind for the retreat, where this will be discussed further.

### **Other Business**

Gildesgame said that Vicki Gartland had left state service and he would like to put in the record that Vicki had made very significant contributions during her tenure with the WRC, DEM and DCR, to managing the water resources of the Commonwealth. He suggested that WRC go on record as thanking Vicki for her many contributions. The WRC unanimously agreed.

Meeting adjourned

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Meeting minutes approved 1/13/05